

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VNUS MEDICAL TECHNOLOGIES, INC.

No. C-05-2972 MMC

Plaintiff

v.

DIOMED HOLDINGS, INC., et al.,

Defendants

**ORDER GRANTING IN PART, DENYING
IN PART, AND DEFERRING IN PART
RULING ON DIOMED'S MOTION FOR
ADMINISTRATIVE RELIEF TO FILE
DOCUMENTS UNDER SEAL;
DIRECTIONS TO DIOMED; DIRECTIONS
TO PLAINTIFF**

Before the Court is defendants Diomed Holdings, Inc. and Diomed, Inc.'s (collectively, "Diomed") motion for administrative relief to file documents under seal, filed August 24, 2007. Having reviewed the Declaration of Brian Farley, filed August 30, 2007 on behalf of plaintiff VNUS Medical Technologies, Inc. ("VNUS"), the Court rules as follows:

1. Diomed's motion is hereby GRANTED in part, specifically, as to the following documents that VNUS has shown contain material properly filed under seal:

a. Diomed's Opposition to VNUS's Motion for Summary Judgment on Patent Infringement; and

b. Exhibits 2, 6, 7, 9, 10, 11, 13, 23, 24 to the Declaration of Charles T. Steenburg in Opposition to VNUS's Motion for Summary Judgment on Infringement.

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1 2. With respect to Diomed's Opposition, only portions of pages 5, 7, and 23 are, for
2 the reasons stated by VNUS, properly filed under seal. Accordingly, Diomed's motion is
3 hereby DENIED to the extent Diomed seeks to file other portions of said document under
4 seal. If Diomed wishes the Court to consider the entirety of its opposition, Diomed is
5 DIRECTED to file in the public record all pages of said document, other than the portions of
6 pages 5, 7, and 23 identified by VNUS as confidential, no later than September 12, 2007.

7 3. With respect to Exhibit 6 to the Steenburg Declaration, only pages 68 and 131
8 are, for the reasons stated by VNUS, properly filed under seal. Accordingly, Diomed's
9 motion is hereby DENIED to the extent Diomed seeks to file other pages of said exhibit
10 under seal. If Diomed wishes the Court to consider the entirety of Exhibit 6, Diomed is
11 DIRECTED to file in the public record all pages of Exhibit 6, other than pages 68 and 131,
12 no later than September 12, 2007.

13 4. With respect to Exhibit 24 to the Steenburg Declaration, only ¶ 6.2 on page 2 is,
14 for the reasons stated by VNUS, properly filed under seal. Accordingly, Diomed's motion is
15 hereby DENIED to the extent Diomed seeks to file other portions of said exhibit under seal.
16 If Diomed wishes the Court to consider the entirety of Exhibit 24, Diomed is DIRECTED to
17 file in the public record all pages of Exhibit 24, other than ¶ 6.2 on page 2, no later than
18 September 12, 2007.

19 5. With respect to Exhibits 4 and 18 to the Steenburg Declaration, no party has
20 asserted, let alone shown, that either such exhibit is properly filed under seal. Accordingly,
21 Diomed's motion is hereby DENIED to the extent Diomed seeks to file said exhibits under
22 seal. If Diomed wishes the Court to consider Exhibits 4 and 18, Diomed is DIRECTED to
23 file them in the public record no later than September 12, 2007.

24 6. With respect to Exhibit 8 to the Steenburg Declaration, VNUS asserts that some
25 portions thereof are properly filed under seal. VNUS, however, fails to identify the portions
26 it asserts contain sealable material. Moreover, no such portion is readily apparent, and
27 substantial portions of the exhibit clearly are not properly filed under seal. (See, e.g.,
28 Steenburg Decl. Ex. 8 at 20:11-25 (discussing witness's job title and identification of

1 individual to whom witness reported).¹ “A sealing order may issue only upon a request that
2 establishes that the document, or portions thereof, is privileged or protectable as a trade
3 secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(a). “The request
4 must be narrowly tailored to seek sealing only of sealable material.” *Id.* Rather than
5 directing Diomed to file Exhibit 8 in the public record, however, the Court hereby DEFERS
6 ruling on Diomed’s motion as it pertains to Exhibit 8 in order to afford VNUS the opportunity
7 to file, no later than September 12, 2007, a supplemental declaration identifying, with
8 specificity, the portions of Exhibit 8 that assertedly are privileged, protectable as a trade
9 secret, or otherwise entitled to be filed under seal.

10 **IT IS SO ORDERED.**

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12 Dated: September 7, 2007


MAXINE M. CHESNEY
United States District Judge

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28 ¹This example is intended to be illustrative only.